

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

MIKHAIL MITSEVICH and IRINA)
MITSEVICH, husband and wife,) No.
Plaintiffs,) NOTICE OF REMOVAL
v.)
NATIONAL CITY MORTGAGE, a division of) Snohomish County Superior Court
NATIONAL BANK OF INDIANA, an Ohio) Cause No. 09-2-06124-4
corporation; TERRI DANIELS, an individual,)
and JOHN DOE TRUSTEE, an unknown Trustee)
company,)
Defendants.)

TO: CLERK OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON

AND TO: Plaintiffs Mikhail and Irina Mitsevich

AND TO: Bruce M. Hull, The Law Offices of Bruce M. Hull, Plaintiff's attorney.

Defendant National City Mortgage ("National City") hereby gives notice of the
removal of the above-entitled action from the Superior Court of the State of Washington for
Snohomish County to the United States District Court for the Western District of Washington.
Defendant removes this action pursuant to 28 U.S.C. § 1441, on the grounds set forth below.

1 1. On June 16, 2009, Plaintiff filed this action in the Superior Court of the State
2 of Washington for the County of Snohomish under cause number 09-2-06124-4. National
3 Bank received service of process on September 15, 2009.

4 2. This Notice of Removal is timely under 28 U.S.C. § 1446(b), as it is being
5 filed within thirty days of service of the Complaint. A copy of the Summons and Complaint
6 filed in the State Court Records is attached hereto as Exhibit A, and a Verification of State
7 Court Records with the complete state court record will be filed within 10 days of filing this
8 Notice of Removal, as required by 28 U.S.C. § 1446(a) and Local Civil Rule 101(b) for the
9 Western District of Washington.

10 2. The Complaint alleges causes of action under the Truth in Lending Act, 15
11 U.S.C. § 1601 and the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607. Thus, this is
12 a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331.

13 3. This action may be removed to this Court pursuant to the provisions of 28
14 U.S.C. § 1441(b) because it is a civil action founded on a claim or right arising under the laws
15 of the United States, and this action is removable without regard to the citizenship or
16 residence of the parties.

17 4. Removal is proper to the Western District of Washington at Seattle because the
18 district and division embrace Snohomish County, Washington.

19 5. The state law claims asserted by Plaintiff in his Complaint relate to and arise
20 from the same nucleus of operative facts as the federal question. The state law claims do not
21 raise novel or complex state law issues, and do not substantially predominate over the federal
22 claim. Accordingly, pursuant to 28 U.S.C. §§ 1367(a) and 1441(c), this Court has
23 supplemental jurisdiction to hear and decide all claims asserted by Plaintiffs in the Complaint.

24 6. National City will promptly file a copy of this Notice of Removal with the
25 Clerk of the Superior Court of the State of Washington for Snohomish County.

1 WHEREFORE, National City respectfully gives notice that the above-entitled action
2 is removed from the Snohomish County Superior Court to the United States District Court for
3 the Western District of Washington.

4
5 DATED this 15th day of October, 2009.

6 Davis Wright Tremaine LLP
7 Attorneys for Defendants

8 By Darcy W. Shearer

9 Cassandra Kennan, WSBA #22845
10 Darcy W. Shearer, WSBA #38992
11 Email: Cassandrakennan@dwt.com
12 Email: Darcyshearer@dwt.com
13 1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045
Tel: (206) 622-3045
Fax: (206) 757-7700

CERTIFICATE OF SERVICE

I declare under penalty of perjury that on this day I caused a copy of the foregoing Notice of Removal to be served upon the following:

Bruce Hull (X) By U. S. Mail
The Law Offices of Bruce M. Hull () By Federal Express
14100 SE 36th Street, Suite 100 () By Facsimile
Bellevue, Washington 98005 () By Messenger

Dated at Seattle, Washington, this 15th day of October, 2009.

Daray W. Shearer

Darcy W. Shearer, WSBA # 38992

EXHIBIT A

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FILED

JUN 16 2009

SONYA KRASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SNOHOMISH

9 MIKHAIL MITSEVICH and IRINA
10 MITSEVICH, husband and wife;

Plaintiffs,

v.

11 NATIONAL CITY MORTGAGE, a division of
12 NATIONAL CITY BANK OF INDIANA, an Ohio
13 corporation; TERRI DANIELS, an individual,
14 and JOHN DOE TRUSTEE; an unknown Trustee
company;

Defendants)

No.: 09 2 06124 4

SUMMONS

17 TO: NATIONAL CITY MORTGAGE, a division of NATIONAL CITY BANK OF INDIANA;
18 TO: TERRI DANIELS; and
19 TO: JOHN DOE TRUSTEE

20 A lawsuit has been started against you in the above-entitled court by Plaintiffs Mikhail and
21 Irina Mitsevich. Plaintiffs' claims are stated in the written complaint, a copy of which is served upon
22 you with this summons.

23 In order to defend against this lawsuit, you must respond to the complaint by stating your
24 defense in writing, and by serving a copy upon the person signing this summons within twenty (20) /
25

26 SUMMONS - 1

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14100 NE 56th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 375-4888
Fax: (425) 375-3373
E-mail: Bruce@hull.law

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sixty (60) days after the service of this summons, excluding the date of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiffs are entitled to what has been asked for because you have not responded. If you serve a notice of appearance on the undersigned attorneys, you are entitled to notice before a default judgment may be entered.

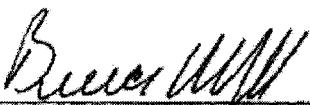
You may demand that the plaintiffs file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiffs must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington, and RCW 4.28.180.

DATED this 16th day of June 2009.

LAW OFFICES OF BRUCE M. HULL, PLLC

By: 
Bruce M. Hull, WSBA # 18943
Shannon M. Whitemore, WSBA # 31530
Attorneys for Plaintiffs Mikhail and Irina Mitsevich

SUMMONS - 2

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14100 SE 36th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 375-1833
Fax: (425) 375-3373
E-mail: Bruce@hull.law

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FILED

JUN 16 2009

SONYA KRASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SNOHOMISH

MIKHAIL MITSEVICH and IRINA
MITSEVICH, husband and wife;

Plaintiffs,

v.

NATIONAL CITY MORTGAGE, a division of
NATIONAL CITY BANK OF INDIANA, an Ohio
corporation; TERRI DANIELS, an individual,
and JOHN DOE TRUSTEE; an unknown Trustee
company;

Defendants.)

No.: 09 2 06124 4
COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT

COME NOW plaintiffs Mikhail and Irina Mitsevich ("Plaintiffs"), by and through their attorneys, Law Offices of Bruce M. Hull pllc, to allege as follows:

I. PARTIES

1. Plaintiffs are residents of Snohomish County.
2. Defendant National City Mortgage, a division of National City Bank of Indiana, ("National City") is an Ohio company that transacts business place of business in Snohomish County, Washington. National City does business in and has sufficient contacts with the State of

COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 1

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THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14100 SE 30th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 373-8668
Fax: (425) 373-3373
E-mail: bruce@brucehull.com

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Washington to be subject to both general and specific jurisdiction.

3. Defendant Terri Daniels is an individual believed to reside in Washington, who transacts business in Snohomish County, Washington. Terri Daniels does business in and has sufficient contacts with the State of Washington to be subject to both general and specific jurisdiction.
 4. Defendant John Doe Trustee is an unknown trustee company doing business in the State of Washington, holding rights in the Deed of Trust identified below. Defendant John Doe Trustee will be identified as discovery allows.

II. JURISDICTION AND VENUE

5. Jurisdiction is proper pursuant to RCW 2.08.010 because the Court possesses jurisdiction over the subject matter of this action and personal jurisdiction over the parties.
 6. Jurisdiction is also proper pursuant to 15 USC 1640(e).
 7. Venue is proper in Snohomish County pursuant to RCW 4.12.025 because the defendants transact business in Snohomish County, Washington, and many of the events described herein took place in Snohomish County, Washington.

III. JURY DEMAND

Plaintiffs elect to have all claims and issues in the above captioned case tried by a jury of twelve persons.

**COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 2**

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14180 SE 36th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 378-5888
Fax: (425) 378-3773
E-mail: hull@uniserve.com

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1 IV. FACTUAL BACKGROUND

- 2 8. Plaintiffs Mikhail and Irina Mitsevich are recent immigrants from Eastern Europe and speak,
3 read, write and understand only limited English.
- 4 9. In June 2006, plaintiffs sought to refinance their home mortgage loan with a low, fixed-rate
5 home mortgage loan.
- 6 10. After receiving a letter by mail from National City offering low, fixed-rate mortgage loans,
7 the Plaintiffs contacted the number in the letter.
- 8 11. Plaintiffs desired to obtain their refinance loan directly from the lending bank, rather than
9 through a mortgage broker, and believed that when they contacted the number in the National
10 City letter that they were dealing directly with the lending bank.
- 11 12. Upon contacting National City, Plaintiff Irina Mitzevich spoke with Terri Daniels, who
12 represented herself as an agent of the lending bank, National City. Ms. Mitzevich requested a
13 low, fixed-rate mortgage loan as advertised in the Mortgage City letter.
- 14 13. At no time during the refinance loan transaction process were Plaintiffs told that they did not
15 qualify for a low, fixed-rate mortgage loan, as was advertised in the Mortgage City letter. At
16 the time of the closing of the loan, the Plaintiffs believed they were receiving the low, fixed-
17 rate mortgage loan advertised in the Mortgage City letter.
- 18 14. Plaintiffs ultimately were given an adjustable rate loan with a high interest rate to refinance
19 their prior home loan. The refinance loan transaction closed on June 16, 2006.
- 20 15. The proceeds of the Loan were used to refinance a loan used to purchase the principal
21 dwelling of the Plaintiffs at 3015 96th Place SE, Everett, Washington 98208 ("Principal
22 Dwelling").
- 23

24 COMPLAINT FOR RESCISSION,
25 DAMAGES, OFFSET AND
26 RECOUPMENT - 3

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14100 SE 30th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 373-3222
Fax: (425) 373-3273
E-mail: BHRM@msn.com

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16. At all relevant times the Principal Dwelling is the principal dwelling and primary residence
1
of the Plaintiffs.
2
17. The Loan was a closed end consumer credit transaction in which a security interest was
3 retained or acquired in Plaintiffs' Principal Dwelling which was consummated within three
4 years of the date of the underlying Loan transaction and was not a residential mortgage
5 transaction or other exempted transaction under 12 USC §1601 et. seq.
6
18. The Loan was evidenced by a Note dated June 16, 2006 in the amount of \$268,000.00, with
7 an interest rate of 7.50% (the "Note").
8
19. The Note was secured by "Deed of Trust" granted by Plaintiffs to Lender's nominee, dated
9 June 16, 2006 and recorded June 23, 2006 under Auditor's File No 200606230644 in the
10 records of Snohomish County, Washington against Plaintiffs' Principal Dwelling.
11
20. The preliminary HUD-1 Settlement Statement provided to the Plaintiffs reflects that a Yield
12 Spread Premium of \$3350.00 was paid by Mortgage City to Terri Daniels, for Ms. Daniels'
13 role in bringing the Plaintiffs to Mortgage City for the loan.
14
21. The Good Faith Estimate provided to the Plaintiffs prior to closing does not reflect any fee
15 paid to Ms. Daniels by Mortgage City.
16
22. At no time prior to or upon the closing of the loan were Plaintiffs provided with an
17 Itemization of the Amount Financed, nor were they informed that such a written itemization
18 was available and would be provided upon their request.
19
23. Plaintiffs were provided only one set of loan documents at closing. Ms. Mitsevich was not
24 provided her own set of documents and disclosures.
25
- 26

COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 4

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14100 SE 35th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 278-5088
Fax: (425) 278-7373
E-mail: Bruce@HullLaw.com

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V. FIRST CAUSE OF ACTION**Rescission**

24. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 23
above.
25. Plaintiffs' Loan was a credit transaction in which a security interest is or will be retained or
acquired in a consumer's principal dwelling as set forth in 12 CFR §226.23.
26. Plaintiffs have the right to rescind the foregoing credit transaction and may exercise this right
upon delivery of the notice of the right to rescind required to be provided by defendant
Countrywide (or its assignors) or delivery of all material disclosures, whichever occurs last.
15 USC §1635(a) and 12 CFR §226.23(a).
27. Plaintiffs never received the required material disclosures required to be provided by
defendant National City (or its assignors).
28. Plaintiffs' complaint is filed less than three (3) years since the consummation of the date of
plaintiffs' Loan and plaintiffs continue to have this right to rescind this transaction.
29. Plaintiffs have properly notified defendant National City of the rescission.
30. As a result of this rescission, the security interest of defendant National City giving rise to the
right of rescission is void and plaintiffs shall not be liable for any amount, including any
finance charge, as permitted in 15 USC §1635(b) and 12 CFR §226.23(d).
31. Defendants National City and Terri Daniels must return any money or property that has been
given to anyone in connection with plaintiffs' Loan transaction and shall take any action
necessary to reflect the termination of the related security interest.

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COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 5

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
 14100 NE 26th Street, Suite 100
 Bellevue, WA 98006
 Phone: (425) 575-8088
 Fax: (425) 575-3273
 E-mail: Bmuhull@msn.com

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1 VI. SECOND CAUSE OF ACTION

2 **Violation of the Truth In Lending Act, Real Estate Settlement Practices Act
3 and Related Regulations**

- 4 32. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 31
5 above.
- 6 33. Plaintiffs were not provided material disclosures and other loan documentation prior to and
7 after plaintiffs' Loan transaction was consummated.
- 8 34. These deficiencies include without limitation the following:
- 9 a. No preliminary disclosure of the Yield Spread Premium as required by 12 CFR
10 §226.4, §226.17(b) and 226.19(a);
11 b. No preliminary Truth in Lending Act disclosure, in violation of 12 CFR
12 §226.18(d)(1)(i);
13 c. No accurate disclosure of Good Faith Estimate or HUD-1 as required under 12 CFR
14 §226.17(a) and (c), §226.18(c) and §226.19(a);
15 d. No Itemization of Amount Financed or disclosure telling the plaintiffs they are
16 entitled to that disclosure in writing as required by 12 CFR §226.18(c);
17 e. No final Truth in Lending Disclosure Statement was provided to either Plaintiff as
18 required by 12 CFR §226.17;
19 f. No disclosure of the Yield Spread Premium paid to Terri Daniels by National City, as
20 required by the Real Estate Settlement Procedures Act as required by 12 USC §2607
21 and 12 CFR §226.17(c).
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COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 6

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14100 NE 36th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 378-4084
Fax: (425) 378-3373
E-mail: Bruce@nile.k12

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35. Such deficiencies by defendants National City and Terri Daniels violate the provisions of the Truth In Lending Act (15 USC §1601 et. seq.), the Related Regulation Z (12 CFR §226 et. seq.) and the Real Estate Settlement Procedures Act (12 USC §2607 et. seq.).

VII. THIRD CAUSE OF ACTION

Violation of the Washington Consumer Protection Act

36. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 35 above.
 37. The conduct of Defendants National City and Terri Daniels, their agents and representatives constitute unfair or deceptive acts or practices in violation of the Washington Consumer Protection Act RCW 19.86 et. seq.
 38. The violations of the Truth In Lending Act (15 USC §1601 et. seq.), the Related Regulation Z (12 CFR §226 et. seq.) and the Real Estate Settlement Procedures Act (12 USC §2607 et. seq.) alleged in Plaintiff's First Cause of Action constitute per se violations of the Consumer Protection Act.
 39. The actions complained of herein are part of a pattern and practice by Defendants National City and Terri Daniels.
 40. The Truth In Lending Act, Related Regulation Z and Real Estate Settlement Procedures Act were each enacted to protect the public in consumer lending transactions.
 41. Such violations by defendants caused Plaintiffs to suffer financial loss.

**COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 7**

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14100 SE 36th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 278-6096
Fax: (425) 278-3373
E-mail: hull@kirk.com

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1 VI. FOURTH CAUSE OF ACTION
23 Fraud/Unjust Enrichment
4

- 5 42. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 41 above.
- 6 43. Defendants National City and Terri Daniels made false representations in the advertisement
7 mailed to and received by Plaintiffs regarding the type and terms of home mortgage refinance
8 loans they were offering to consumers.
- 9 44. Plaintiffs applied to Defendant National City for a refinancing loan through Defendant Terri
10 Daniels.
- 11 45. Defendant National City paid to Defendant Terri Daniels a "Yield Spread Premium" of \$3,350
12 which was not properly disclosed in the pre-closing or at-closing disclosures to Plaintiffs.
- 13 46. The Yield Spread Premium represents a payment made to the loan originator or broker as a
14 "bounty" for bringing a borrower to the lender at a higher interest rate.
- 15 47. Defendants National City and Terri Daniels have caused plaintiff to pay increased interest at a
16 rate of 0.50% as a result of the payment of the undisclosed Yield Spread Premium.
- 17 48. The false representations and omissions by the Defendants and their agents and representatives
18 were material.
- 19 49. Defendants and their agents and representatives made the false representations and omissions
20 knowing they were false and with the intention of inducing plaintiff to act upon them.
- 21 50. Plaintiff was ignorant of the falsity of the misrepresentations and omissions. Plaintiff reasonably
22 relied upon the misrepresentations and omissions and was damaged thereby.
- 23 51. Defendants were unjustly enriched by the Yield Spread Premium and interest paid by Plaintiff
24 based on their misrepresentations and omissions.
- 25
- 26

COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 8

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
 14100 SE 36th Street, Suite 100
 Bellevue, WA 98006
 Phone: (425) 373-3882
 Fax: (425) 373-3373
 E-mail: Bruce@hullslp.com

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2 **VIII. PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs pray for relief as follows:

- 4 1. Judgment against defendants National City and Terri Daniels for damages, recoupment,
 5 setoff, actual and statutory damages, penalties and attorneys' fees and costs as provided in the
 6 Truth In Lending Act (15 USC §1601 et. seq.), the underlying regulations (12 CFR §226 et.
 7 seq.) and the Real Estate Settlement Procedures Act 12 USC §2601 et. seq.;
- 8 2. Judgment against defendants National City and Terri Daniels for damages and reasonable
 9 attorneys' fees and costs as provided in the Washington Consumer Protection Act RCW
 10 19.36 et. seq.;
- 11 3. For an order against defendants John Doe Trustee that any Trustee's Sale scheduled during
 12 the pendency of this action be restrained and a temporary restraining order and preliminary
 13 injunction be granted to restrain such sale;
- 14 4. For an order against defendants National City and Terri Daniels declaring plaintiffs' Loan
 15 transaction is rescinded in favor of plaintiffs and that security interest of such defendants is
 16 void;
- 17 5. For an order against defendants National City and Terri Daniels in favor of plaintiffs ordering
 18 defendants to comply with the rescission provisions of 15 USC §1635(a) and 12 CFR
 19 §226.23(d);
- 20 6. In the alternative, if no order of rescission is granted, for an order restructuring the terms and
 21 conditions of plaintiffs' Loan agreements and security documents pursuant to 15 USC
 22 §1635(b) and 12 CFR §226.23(d)(4);
- 23

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COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 9

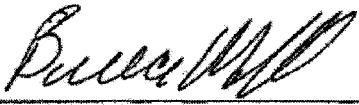
THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
 14100 SE 36th Street, Suite 100
 Bellevue, WA 98006
 Phone: (425) 378-8088
 Fax: (425) 378-3373
 E-mail: Bruce@alix.law

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- 1 7. An award of pre-judgment and post-judgment interest, as allowed by law;
2 8. Costs of suit, including an award of reasonable attorneys' fees; and
3 9. For such other and further relief as the Court deems just and equitable.

4 DATED this 16th day of June 2009.
5
6 LAW OFFICES OF BRUCE M. HULL, PLLC

7 
8 By: _____
9 Bruce M. Hull, WSBA # 18943
Shannon M. Whitemore, WSBA # 31530
Attorneys for Plaintiffs Mikhail and Irina Mitsevich

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COMPLAINT FOR RESCISSION,
DAMAGES, OFFSET AND
RECOUPMENT - 10

THE LAW OFFICES OF BRUCE M. HULL
A Professional Limited Liability Corporation
14106 SE 10th Street, Suite 100
Bellevue, WA 98006
Phone: (425) 378-4081
Fax: (425) 378-3373
E-mail: Bruce@BPLLC.com